

1979 WL 42832 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 1, 1979

*1 The Honorable William Knotts
Senator
District No. 8
Gressette Office Building—Fifth Floor
Columbia, South Carolina

Dear Senator Knotts:

You have asked the opinion of this Office on whether it would be a violation of the constitutional provisions prohibiting dual office holding for the Probate Judge of Barnwell County to perform the duties of the Master-in-Equity [hereinafter referred to as Master] pursuant to Act Number 105 of the 1949 Acts and Joint Resolutions. As I understand the facts related to this question, the office of Master for Barnwell County is presently vacant.¹

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see [Article VI, § 3](#). This opinion must apply the language and meaning of this constitutional provision to Act 105 and its application.

Section 1 of Act 105 provides that in the event of a vacancy in the office of the Master, ‘all the powers, duties and authorities appertaining to the office of Master . . . shall . . . devolve upon the Probate Judge . . .’ [Enclosure] Reading this Act in conjunction with [§§ 14-11-10, 14-11-50, 1-3-210, 1-3-220, and 4-11-20, Code of Laws of South Carolina](#), 1976, as amended, it must be intended to allow the Probate Judge to perform by virtue of his office the duties of the Master until the Governor appoints a replacement or successor. Thus, Act 105 is similar to [§ 14-17-30](#), which provides that the Probate Judge shall perform the duties of the Clerk of Court in the event of a vacancy in that office until the vacancy is filled by an appointment by the Governor or by an election. Neither Act 105, nor [§ 14-17-30](#) permits the actual assumption of the vacant office by the other officeholder; rather, it provides for continuity in the performance of the duties of the vacant office by an official in a related office.

The effect of Act 105 is analogous to the situation where an executive or legislative official is by legislation an *ex officio* [by virtue of his office] member of a separate but related board or commission. E.g. An act providing that a mayor is a member of a regional public service district. It has been held that such situations do not constitute dual office holding. [Ashmore v. Greater Greenville Sewer Dist.](#), 211 S.C. 77, 44 S.E.2d 88 (1947); [Welling v. Clinton-Newberry Natural Gas Authority](#), 221 S.C. 417, 71 S.E.2d 7 (1952); 1966 Ops. Atty. Gen., No. 2069, p. 163. Also see [§ 14-24-10](#), which allows mayors to perform certain judicial functions. 1975 Ops. Atty. Gen., No. 4012, p. 84.

It also should be noted that to come within the prohibition of [Article XVII, § 1A](#), one must be charged by law with the performance of official duties which are ‘continuing and not occasional or intermittent . . .’ [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907); 1975 Ops. Atty. Gen., No. 4012, p. 84. Act 105 would appear to be intended to allow the Probate Judge of Barnwell County to perform the duties of Master on an occasional, as needed basis during the vacancy in the office of Master and, therefore, be outside the dual office holding prohibition.

*2 Based on the foregoing, it is the opinion of this Office that pursuant to Act 105 the Probate Judge may perform the duties of the Master until the Governor appoints a replacement or successor to that office without contravening [Article XVII, § 1A](#).
Sincerely,

James M. Holly
State Attorney

Footnotes

¹ This opinion addresses the issue of dual-office holding only.

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